NO. 82-1371

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

MARGARET M. HECKLER, Secretary of Health and Human Services,

Petitioner,

—against—

LEON S. DAY, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE CITY OF NEW YORK *AMICUS CURIAE*

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BRIEF FOR THE CITY OF NEW YORK *AMICUS CURIAE*

Interest of the *Amicus Curiae*

The City of New York ("City") submits this brief in support of the respondents' position that section 205(b) of the Social Security Act, 42 U.S.C. §405(b), provides

an enforceable right to a prompt disposition of appeals of determinations of ineligibility for Social Security disability benefits.

The City seeks to protect two distinct important interests—the right of its disabled citizens to a prompt resolution of appeals from determinations of ineligibility for disability benefits; and the protection of its own fisc, for the benefit of all of its citizens, which is drained by the provision of locally-financed assistance during the pendency of disability claims.

As for the injury to the City's disabled, the Secretary is under two court orders in New York to process promptly appeals from denials of eligibility for disability benefits. These orders protect the rights of claimants both under Title II of the Social Security Act ("SSA"), 42 U.S.C. §§401, *et seq.* ("SSD" benefits), and under Title XVI, 42 U.S.C. §§1381, *et seq.* (Supplementary Security Income or "SSI" benefits). In *Martinez* v. *Weinberger*, No. 73 Civ. 900 (E.D.N.Y. 1978) (unrep. dec. & order of Nickerson, D.J.), the district court ordered that in all appeals of SSD and concurrent SSD/SSI cases, the Secretary must issue decisions within 120 days from the date the appeal was filed (unless certain exceptional situations were present); and in *Sharpe, et al.* v. *Harris*, 621 F.2d 530 (2d Cir. 1980), the Court of Appeals affirmed the lower court's order imposing the same time limits as in *Martinez* for the disposition of SSI appeals. These courts were, as are the courts below, merely enforcing the claimants' statutory rights to a "reasonable . . . opportunity for a hearing." 42 U.S.C. §405(b) (SSD); 42 U.S.C. §1383(c)(1) (SSI). The City seeks to ensure that these rights are not derogated.

Second, the City has a fiscal interest in the affirmance of the decision rendered by the court below. During the pendency of their appeals, the claimants receive local public

assistance. In New York, most of these individuals would receive "Home Relief" benefits, which are 50% funded by the City. *See* New York Social Services Law §157 (McKinney's 1983). The longer the period of time between the initial determination of ineligibility and the disposition of the appeal, the greater the amount of assistance the City and other localities will have to pay.*

The fiscal impact on the City of delays in the resolution of appeals is significant. In addition to its administrative costs, the City pays over $2.54 million annually to every 1,000 recipients of Home Relief benefits. Prior to the rendering of relief in *Sharpe, supra,* the City incurred costs of over $400,000 for the Home Relief benefits it paid to every 1000 members of the class during the two-month period which the Secretary delayed beyond the time period the court found reasonable for the resolution of appeals. Similarly, in *Martinez, supra,* the court found that the average delay in disposing of appeals filed by SSD applicants exceeded 200 days. Accordingly, the City incurred at least $1.2 million for the benefits it paid to the class members for the three-month excess time period.

That the Secretary's delays in resolving appeals should have a negative fiscal impact on the City is ironic, in light of Congress' original purpose in enacting the SSA of easing the financial burden on localities caused by ever increasing public assistance costs. Congress re-stated this purpose when it subsequently amended the SSA to enlarge

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* The City receives automatic reimbursement from the Secretary for the public assistance it has paid to individuals who are ultimately determined to be eligible for SSI benefits. *See* 42 U.S.C. §1383(g). But, the City does not receive such automatic reimbursement for assistance paid to SSD claimants who ultimately are determined eligible after appeals.

the numbers and types of individuals to receive benefits thereunder.*

Summary of Argument

The courts below properly construed section 205(b) of the Social Security Act, 42 U.S.C. §405(b), as mandating that claimants who are denied disability benefits are entitled to administrative review within a reasonable time, and that pervasive, lengthy and unaccountable delays by the Secretary violate that statutory right. Courts of Appeals for two other Circuits have adopted the same interpretation. Moreover, the Secretary has so construed similar language in other benefits programs as authority for imposing deadlines on states and localities.

The Secretary's argument here misconstrues the statutory interpretation given 42 U.S.C. §405(b) by the lower courts, and confuses the legally distinct issues of statutory interpretation and relief for violation of a statutory right.

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* The legislative history of the 1960 amendments, which repealed the age limits found in the original version of the Title II disability program, shows a continued Congressional realization of the drain on state and local treasuries caused by assistance payments. "Many [of the disabled] who would be eligible for disability benefits except for the age limitation are now receiving payments under public assistance programs [including locally funded assistance]. With insurance benefits available to them, some of these individuals would no longer need assistance payments." S. Rep. No. 1856, 86th Cong. 2d Sess. *reprinted* in [1960] *U.S. Code Cong. and Ad. News* 3608, 3623. The estimated savings in public assistance funds was to be $28 million. *Id.* The legislative history of the Title XVI program also reflects a Congressional intent that fiscal resources of localities be conserved. *See* House Rep. No. 92-231, 92d Cong. 2d Sess. *reprinted in* [1972] *U.S. Code Cong. and Ad. News* 4989, 4992.

Her defenses to plaintiffs' claim—the need for accuracy and the lack of adequate resources—are without merit.

The relief ordered by the district court was appropriate and limited to redressing the injuries found. It may not be overturned because it was not an abuse of discretion, and it was not precluded expressly or impliedly by the United States Constitution or by statute. Moreover, the type of relief ordered here has been expressly approved by this Court in a similar context.

The decision of the Court of Appeals should be affirmed.

POINT I

Plaintiffs are entitled to relief from the Secretary's violation of their right to reasonably prompt review of denials of benefits.

A. The plaintiffs' statutory right to reasonably prompt administrative reviews of denials of disability claims was violated by the pervasive, lengthy and unexplained delays caused by the Secretary.

The Court of Appeals ruled for the fourth time that the provision of the Social Security Act ("SSA") requiring a "reasonable . . . opportunity for a hearing . . .," 42 U.S.C. §405 (b) ("section 405[b]"), mandates that the appeals taken thereunder be resolved reasonably promptly. *See Sharpe* v. *Harris*, 621 F.2d 530 (2d Cir. 1980); *Barnett* v. *Califano*, 580 F.2d 28 (2d Cir. 1978) ("Substantial delays suffered by [SSI] claimants deprived them of a "reasonable . . . opportunity for a hearing."); *White* v. *Mathews*, 559 F.2d 852 (2d Cir. 1977), *cert. denied*, 435 U.S. 908 (1978). The *White* court noted that section 405(b) gives

"the [SSD] claimants a right to a hearing within a reasonable time," and that "the Secretary [did not] dispute this construction." *White*, 559 F.2d at 858.

Moreover, in both cases, the courts found that the plaintiff classes were seriously harmed by the delays they experienced. *White, supra*, 559 F.2d at 858-59, quoting this Court's decision in *Mathews* v. *Eldridge*, 424 U.S. 319, 342 (1976); *Barnett, supra*, 580 F.2d at 31-32 (SSI recipients are even more harmed by delays than the SSD claimants in *White* because by definition they are needy). Furthermore, in *White*, the court also held that unreasonable delays "detract seriously from the effectiveness of the [disability] program." 559 F.2d at 858.

The Sixth Circuit in *Blankenship* v. *Secretary of HEW*, 587 F.2d 329 (6th Cir. 1978), and the First Circuit in *Caswell* v. *Califano*, 583 F.2d 9 (1st Cir. 1978), have reached the same conclusion.* Even the Seventh Circuit, which alone among the circuits has refused to impose time deadlines on the Secretary, has ruled that, as a threshold legal matter, section 405(b) requires the Secretary "to provide rulings within a reasonable time." *Wright* v. *Califano*, 587 F.2d 345 (7th Cir. 1978). The court "readily agree[d] that

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*These courts have read the "reasonable . . . opportunity for a hearing" provision in the same way that other courts have interpreted similar language found in the statutes enacting other benefit programs. For example, in *Cornelius* v. *Minter*, 395 F. Supp. 616, 621 (D. Mass. 1974), the court found that a delay of two to six months for the determination of eligibility for Aid to Families with Dependent Children violates the statutory requirement that "aid . . . shall be furnished with reasonable promptness." 42 U.S.C. §602 (a)(10). The court stated that "courts are uniquely situated to determining [*sic*] what time period is reasonable in such a situation." *Id.* at 621. *See also Like* v. *Carter*, 448 F.2d 798 (8th Cir. 1971), *cert. denied*, 405 U.S. 1045 (1972).

such delays may undercut the purposes of the Act." *Id.* at 381.*

Having correctly determined the threshold issue—that the language "reasonable . . . opportunity for a hearing" has meaning—the courts below defined what is "reasonable" under the circumstances. The district court correctly focused on the factual record before it, just as the other courts focused on the records before them, and fashioned the relief accordingly. And, the Court of Appeals correctly determined that, based upon a review of the factual cir-

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* In *Wright*, the holding in the Secretary's favor was very narrow and was based solely on the factual record before it. The court affirmed the district court finding that "there have been long delays at each step of the appeals process" for old age and survivors benefits. *Id.* at 347. The court also noted that plaintiffs' interest in prompt action is "beyond dispute" and that their impoverished position as a result of delays was such that they suffered deprivations that cannot be "fully compensated for by the provision of retroactive benefits," if ultimately found eligible. *Id.* at 351. However, in *Wright*, unlike the other cases, and in stark contrast to the instant case, the plaintiffs failed to allege and prove that the length of time taken was due to dilatory or otherwise unexplainable conduct by the Secretary. *Id.* at 352-53. Thus, the court had before it only the unrebutted bald assertions by the Secretary that the delays were due solely to an "explosion" in the number of claims to be processed and limitations on resources. *Id.* at 353. As a result, the *Wright* court found for the Secretary only on the very narrow ground that the delays were not "so unreasonable as to constitute a breach of the applicants' statutory rights justifying the extraordinary remedy imposed." 587 F.2d at 347. The district court's order in *Wright* considerably exceeded that of the instant case. *Wright, supra*, 587 F.2d at 348. *Cf.*, Point II, *infra*.

cumstances, the delays in Vermont were unreasonable as a matter of law.*

In determining whether the delays were reasonable, the district court reviewed the same factors as did the other courts: a) the claimants' interest in receiving a prompt decision and the resulting hardship when such decision is delayed; b) the interest of both the agency and claimant in an accurate determination; c) the length of the delays; and d) the reason for such delays. App. at 12a-18a, 27a-29a. *See White, supra,* 559 F.2d at 852.

The Secretary does not dispute that the delays in Vermont were lengthy. Nor can she dispute that, as a result of these delays, claimants suffered hardships. She does argue, somewhat disingenuously, that prompt decisionmaking may conflict with the interest of ensuring that the decisions are accurate.

Claimants share the Secretary's interest in accurate determinations of eligibility. But, the Secretary never elucidates how this need causes delay (other than when the ALJ needs more time to acquire additional information, which is a situation excluded from the district court's order).

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* In this appeal, the Secretary criticizes the Court of Appeals for not giving due consideration to her arguments. (*See* Pet. Br. at 36.) The Secretary neglects to mention, however, that the court found that the arguments were "almost indistinguishable" from those already decided in *Sharpe, Barnett,* and *White.* In all of these cases, the Secretary has argued that the courts should not interfere because Congress was looking into the issue and because the Secretary had absolute discretion apparently to take forever to schedule review hearings. Aside from the merits, the Secretary also argued in each case that the courts have no jurisdiction over the claims and that class certification is improper.

In regulating the operation of federally funded, but locally administered, public assistance programs, the Secretary expects state and local agencies to make prompt and accurate determinations at all stages of the application process. For example, in regulating the Aid to Families with Dependent Children ("AFDC") program, 42 U.S.C. §§601 *et seq.*, the Secretary requires that initial determinations of eligibility be made within 45 days of application, 45 C.F.R. §206.10(a)(3)(i), and that all appeals of adverse initial determinations or of discontinuances or reductions of aid be made, and implemented, within 90 days. 45 C.F.R. §205.10(a)(16).

The Secretary's argument here that section 405(b)'s requirement of a "reasonable . . . opportunity for a hearing" has no meaning is undercut by her reading of similar statutory language as the basis for imposing the above-described deadlines on the states and localities. The Social Security Act mandates that AFDC "be furnished with reasonable promptness." 42 U.S.C. §602(a)(10). That language is the basis of the Secretary's requirement that eligibility be determined within 45 days, regardless of the number of pending applications or the administrative resources available. This interpretation has been consistently upheld by the courts. *See Alexander* v. *Hill*, 707 F.2d 780 (4th Cir. 1983); *Fortin* v. *Commissioner of the Massachusetts Dept. of Public Welfare*, 692 F.2d 790, 793 n.1 (1st Cir. 1982); *Cornelius* v. *Minter*, 395 F. Supp. 616 (D. Mass. 1974). The "reasonable promptness" language is also the statutory basis for the Secretary's requirement that appeals of determinations of ineligibility be resolved, and the decisions implemented, within 90 days. *See Shands* v. *Tull*, 602 F.2d 1156, 1160 (3d Cir. 1979). It is ironic that the Secretary does not hesitate to impose time deadlines on state and local governments, but is not prepared to abide by such deadlines herself.

In calling to this Court's attention the conflict between prompt decisionmaking and accuracy in SSD determinations, the Secretary notes no such conflict in administering the AFDC program. At the same time as the Secretary requires the localities to render promptly difficult determinations of eligibility,* she also requires that such determinations be accurate. The states and localities are subject to financial penalties for the errors they make. *See* 42 U.S.C. §603(i)(1); 45 C.F.R. §205.42.

Nor has the Secretary, in the past, given the state and localities the degree of flexibility that she asks this Court to grant her, for the making of a "good faith" effort to meet "prompt" decisionmaking deadlines. For example, in *Nelson* v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1972), the Secretary argued to the court, as an *amicus*, that the City and the State of New York should be held strictly to the deadline imposed by the regulations for the disposition of appeals and implementation of decisions. In that case, the court rejected arguments regarding high caseloads and "inadequate resources" which are strikingly similar to those

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*This Court in *Mathews* v. *Eldridge*, 424 U.S. 319, 343-44 (1976), acknowledges that determinations of eligibility for needs-based cash benefit programs may be more difficult than disability determinations:

> [In determining continued eligibility for Title II benefits] a medical assessment of the worker's physical or mental condition is required. This is a more sharply focused and easily documented decision than the typical determination of welfare entitlement. In the latter case, a wide variety of information may be deemed relevant and issues of witness credibility and veracity often are critical to the decisionmaking process.

made by the Secretary here. *Nelson*, 361 F. Supp. at 1138-1141.*

Finally, this Court should look at one other circumstance that is relevant in determining the reasons for the delay: that they are largely a result of the Secretary's own improper or illegal actions. In effect, she comes to this Court with "unclean hands." Accordingly, it would be both unreasonable and unfair to excuse lengthy delays in resolving appeals.

First, the caseload has increased as a result of the Secretary's official policies encouraging state disability agencies and ALJ's to disregard judicial precedent. The Secretary issues Social Security Rulings of "non-acquiescence" to federal court decisions, ordering that the ruling not be adhered to in any other case. The resulting lack of uniformity in decisionmaking causes numerous remands from the federal courts and contributes to the backlog of cases. This non-acquiescence policy has been challenged and preliminarily enjoined. *See, e.g., Lopez* v. *Heckler*, 52 U.S.L.W. 2031 (C.D. Cal. 1983), *app. pend-*

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* There are presently 860,000 recipients of locally administered public assistance in the City of New York. Each year about 250,000 individuals are added to the public assistance rolls (and a similar number of cases are closed). The City must decide the eligibility of each of these individuals within 45 days. In addition, each year about 90,000 "fair hearing" appeals are held. The State of New York must resolve each of these within 90 days. This huge, and ever increasing, number of initial determinations and hearings creates great strain on the City and on the State of New York. Ironically, the Secretary's actions in finding fewer people who apply to be eligible for SSD and SSI, in cutting off those individuals already receiving benefits and in delaying the disposition of their appeals adds to the pressures on the State and local systems, which, as a result, must determine the eligibility of many more individuals for local public assistance.

ing (9th Cir. 1983), *stay pending app. granted sub nom. Heckler* v. *Lopez*, No. A-145 (U.S. Sup. Ct. Sept. 9, 1983) (Rehnquist, J.).

In addition, the Secretary has required the use of unpublished, medically incorrect and otherwise illegal standards in evaluating claims of disability. The use of such standards in evaluating claims of disability by virtue of mental illness has been successfully challenged. *See Mental Health Assoc. of Minnesota* v. *Schweiker*, 554 F. Supp. 157, 166 (D. Minn. 1982) ("The policy . . . violates the Social Security Act, the implementing regulations thereunder, the requirements of case law, and is arbitrary, capricious, irrational, and an abuse of discretion"). Other suits challenging these illegal standards are pending.* Until these lawsuits are resolved, many individuals have been and are being initially denied or subsequently terminated from the SSD program, and the number of appeals has and will increase.

B. The Secretary's argument is without merit because it misinterprets the decisions below and constitutes an indirect attack on the power of Federal courts to interpret and enforce statutes.

Closely scrutinized, the Secretary's so-called statutory analysis argument in fact is an indirect attack on settled decisions of this Court as to the jurisdiction of the federal

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* Along with the State of New York and individual claimants, the City has commenced actions challenging the standards and practices used to determine eligibility by virtue of a mental illness disability, *City of New York, et al.* v. *Heckler, et al.* (No. CV83-0457 (E.D.N.Y.), and challenging the standards used to determine eligibility by virtue of a cardiovascular disability, *State of New York and City of New York, et al.* v. *Heckler, et al.*, No. 83 Civ. 5903 (S.D.N.Y.).

courts to review claims of violations of the SSA, the obligation of the courts to interpret statutory provisions which bind the Secretary, and the power and discretion of the courts to order appropriate and meaningful equitable relief. Cast in its true light, the Secretary's argument is without merit.

Mathews v. *Eldridge*, 424 U.S. 319 (1976), makes clear that federal courts have the jurisdiction to review claims of statutory violation such as are in issue here. Moreover, statutory interpretation is not an extraordinary event. It is the "everyday staple of judges," *National Petroleum Refiners Assn.* v. *F.T.C.*, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974), and a statutory standard under which an agency acts must '"get [its] final meaning from judicial construction.'" *Id.* at 693, *quoting*, *F.T.C.* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965). A court's order of injunctive relief is also a commonplace event, and, in fact, the propriety of the order herein was settled by this Court in *Califano* v. *Yamasaki*, 442 U.S. 682 (1979). *See* Point II, *infra*.

Specifically, the Secretary asserts that the issue on appeal "presents solely a question of statutory interpretion" (Pet. Br. at 20): "[W]hat, if anything, did Congress intend the Social Security Act to require with respect to the timing of ALJ hearings." *Id.* She argues that Congress, based on her review of post-enactment hearings, did not intend to impose fixed deadlines. *Id.* She then erroneously concludes that because Congress has not imposed across-the-board deadlines, a court may not interpret the statute as conferring any right upon disability claimants and may not afford relief to injured plaintiffs. From the Secretary's point of view, if the agency takes 10 years to schedule a hearing, a disability claimant has no recourse but to wait. Pet. Br. at 33.

The Secretary's analysis goes astray because she has collapsed the lower courts' interpretation of the statute with the relief ordered for violation thereof—two analytically distinct issues. Section 405(b) has been quite modestly interpreted as mandating that reviews be scheduled within a reasonable period of time, and that unexplainable lengthy delays are unreasonable. *See* Point I(A), *supra.** Therefore, the Secretary's arguments about undue interference by the courts grossly misinterprets the decision below, and reveal an underlying desire to avoid any scrutiny of her conduct. It is simply gross exaggeration, for example, for the Secretary to assert that the interpretation given to section 405(b) by the courts below constituted a "circumvent[ion]" of "congressional judgment" by substituting "their own version of what would be a 'reasonable' period of time within which to conduct a hearing." (Pet. Br. at 21). This confuses statutory interpretation with remedial relief.

The Secretary also elaborately exaggerates by asserting that the courts below did not duly take into account "all" the other factors besides timeliness that the state agency and HHS are obligated to consider; namely, "accuracy, fairnes, uniformity, efficiency, and economy" (Pet. Br. at 19), and "timeliness" (Pet. Br. at 36). But Congress has expressly indicated that there are only two: accuracy

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* The Court of Appeals for the Seventh Circuit in *Wright*, the lone dissenter among the circuits, agreed with the others as to the statutory mandate. It disagreed, because of the limited record before it, that the delays experienced in that circuit were unreasonable. *See Point* I(A) *supra*, at 7n.

and timeliness.* That is, plaintiffs have a right both to timely and accurate determinations and reviews.

As to the first, timeliness, the Secretary acknowledges, albeit with chagrin, that the lower courts gave due consideration to this criterion. Pet. Br. at 12-14, 31-33, 36. Moreover, this Court noted in *Heckler* v. *Campbell*, —— U.S. ——, 103 S.Ct. 1952, 1954 n.2 (1983), that precisely because of the large number of claims, "the need for efficiency [in the hearing process] is self-evident."

As to the second criterion—quality—the Secretary has had innumerable opportunities to demonstrate to the district courts that this consideration is the explanation for otherwise unaccountable delays, but has failed to do so.** The Secretary's brief does not cite to any evidence that lengthy delays have a beneficial effect on the quality of reviews. *See, e.g.*, Pet. Br. at 15-17, 19-21, 23-24, 33-36. Indeed, this bald assertion was expressly rejected by the court below precisely because categories of delay relating to improving the quality of determinations are exempt from the district court order. 685 F.2d at 22, nn. 6 & 7.***

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* The Secretary discusses the 1980 amendments to the SSA, which direct the Secretary to recommend time limits which take into account *two* needs: "expeditious processing of claims" and "accurately determined" claims. (Pet Br. at 26.) Similarly, the excerpted Senate Report states that this provision reflected Congress' desire for "speed and quality" of adjudication (Pet. Br. at 27). Thus, there are not six, but two, criteria imposed on the Secretary for claims determination.

** Even the *Wright* court's decision in favor of the Secretary was not premised on this ground, but on overburden. 587 F.2d at 352-53.

*** In addition, all delays in any way attributable to claimant are excluded from any outer limits on processing time. 685 F.2d at 22, nn. 6 & 7.

Furthermore, a major reason for the finding that plaintiffs are injured by these delays is the high reversal rates of initial denials and reconsiderations. *See, White, supra,* 559 F.2d at 858 (more than half for SSD claims); *Barnett, supra,* 580 F.2d at 31 & n.10 (almost half nationwide and more than a third in Vermont for SSI claims); *Caswell, supra,* 583 F.2d at 13 (nearly half for the entire New England region). Even the *Wright* court acknowledged the high reversal rates. 587 F.2d at 355. The Secretary, therefore, is disingenuous in asserting, and has never proved, that delays other than those attributable to the acquisition of new evidence are a function of the quality of the review. In fact, her own brief cites to a Congressional finding that the quality of adjudications is "somewhat suspect." Pet. Br. at 23-24.*

Nor has the Secretary ever proved her claim of overburden, upon which the *Wright* court based its decision and which she urges herein. Large numbers of claims processed, and requests for review of denials or terminations are cited to the courts. But numbers alone do not provide a basis for determining whether resources are adequate to the task. Furthermore, the so-called "explosion" in claims principally related to the addition of two new classes of eligibility: "black lung" claimants and SSI claimants, both of

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* The Secretary also cites to the separate opinions of Mr. Justice Brennan and Mr. Justice Marshall in *Heckler* v. *Campbell, supra,* —— U.S. at ——, 103 S.Ct. at 1959-62, to support the argument that the goal of quality of determinations engenders delay. Pet. Br. at 34. Those opinions, however, expressly criticized the *lack* of quality in the ALJ hearing at issue therein. *Heckler* v. *Campbell, supra,* —— U.S. ——, 103 S.Ct. at 1959-60 (Brennan, J., concurring); —— U.S. ——, 103 S.Ct. at 1960-61 (Marshall, J., concurring in part, and dissenting in part).

which occurred more than ten years ago.* In addition, while arguing overburden to the courts, the agency has reported to Congress that resolution of the backlog was at hand. *See, e.g., White, supra,* 559 F.2d at 860.

In any event, the SSA disability programs were enacted to lessen the financial burden on the disabled and on local governments and necessarily creates a burden on the federal government. *See supra,* at 4n. There is nothing in the SSA or its legislative history to authorize the Secretary to lessen the resulting burden on her agency at the expense of the intended beneficiaries.

POINT II

The equitable relief ordered by the District Court was well within its discretionary powers in that it provided relief that is both appropriate and limited to redressing plaintiffs' injuries.

As demonstrated in Point I, *supra,* section 405(b) provides a statutory right to disability claimants to have their requests for administrative review of claim denials processed within a reasonable time; the Secretary has violated that right of the plaintiff class in this action by allowing unreasonable and unaccountable delays in the review process; and, such delay produces an irreparable injury to the plaintiff class. Having thus proved a claim for relief, the plaintiff class was entitled to relief that would redress the injury.

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*Coal Mine Health and Safety Act of 1969, 30 U.S.C. §901, *et seq.*, Title XVI of the Social Security Act, 42 U.S.C. §1381, *et seq.* (1972). *See, White, supra,* 559 F.2d at 859.

The district court ordered two types of prospective injunctive relief: (1) a six-month deadline for the processing of requests for reconsideration and the scheduling of ALJ hearings in cases where processing is not delayed by the submission of new evidence or by any actions attributable to claimants; and (2) interim monetary relief to those claimants protected by the processing deadline where the Secretary violates that deadline, subject to recoupment if they ultimately are determined to be ineligible.

The Secretary argues that the court grossly overreached its powers by ordering such relief. Pet. Br., *passim*. In her "statutory analysis" argument, the Secretary continually refers to the court's order as constituting a statutory interpretation that all disability claimants seeking review are entitled to a six-month deadline for scheduling ALJ hearings. Pet. Br., at 26-30. Again, the Secretary misconstrues what the district court did, and in that process proffers arguments that do not bear on the issue before this Court.

District courts have broad discretionary powers to fashion appropriate equitable relief which is not subject to reversal by a reviewing court except for abuse of discretion; that is, it must lack a reasonable basis. *Milliken* v. *Bradley*, 433 U.S. 267, 281-83 (1977); *Hills* v. *Gautreaux*, 425 U.S. 284, 297 (1976); *Swann* v. *Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15 (1971); *Rivers* v. *Schweiker*, 692 F.2d 871, 873 (2d Cir. 1982), *cert. denied*, 103 S.Ct. 1783 (1983), *citing*, *Kaynard* v. *Mego Corp.*, 633 F.2d 1026, 1030 (2d Cir. 1980).

Once a court determines that a statutory provision confers an enforceable right on a plaintiff, and such right has been violated, the court has available all its inherent powers to fashion a remedy except those that are prohibited in a particular case by the United States Constitu-

tion or by statute, either expressly or by clear implication. *See, e.g., Edelman* v. *Jordan,* 415 U.S. 651, 678 (1974) (the Eleventh Amendments limits relief against a state to prospective relief); *Adickes* v. *Kress & Co.,* 398 U.S. 144, 150-51 & n.5 (1970) (Congress expressly limited redress to injunctive relief for violations of Title II of the Civil Rights Act of 1964).

Nothing in the SSA prohibits the relief ordered here. The Secretary argues that Congress' repeated failure to impose deadlines is evidence that the relief ordered here is inconsistent with the statute. Pet. Br. at 20-31. This argument is both disingenuous and wrong.

The argument is disingenuous because the Secretary fails to admit to the role her agency played in thwarting Congressional imposition of deadlines.* Congress has repeatedly expressed its concern that the processing of applications takes too long. The Secretary has repeatedly (but inaccurately) informed Congress that the situation was well in hand and resolution of the problem was imminent. Having thus successfully forestalled Congress from taking action, the Secretary, when faced with court challenges to processing delays, then did an about-face and argued to the courts that Congress' failure to impose deadlines meant that Congress opposed their imposition.

The repeated concern of Congress over processing delays and its suggestions to the Secretary to issue deadline regulations shows that Congress believes that such deadlines are consistent with the SSA. *See, e.g., Heckler* v. *Campbell, supra,* —— U.S. at ——, 103 S. Ct. at 1957,

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* Rather than repeat the legislative history at issue, the City relies on such history presented in both Petitioner's and Respondents' briefs to demonstrate that the Secretary has repeatedly and affirmatively lulled Congress into inaction.

n.10.* The Secretary certainly does not argue that the agency is precluded from imposing deadlines, only that it has not chosen to do so.** Therefore, her argument that a court is prohibited by statute from doing so as a remedy for injuries caused by statutory violations is without merit.

The Secretary's argument also fails to recognize the federal courts' power to issue class relief. She euphemistically refers to the "program-wide relief" ordered by the court, but that is nothing more than class relief. This argument was lost when the court below granted class certification. Class relief in the instant case is at least as appropriate as the nationwide class certification and relief approved by this Court in *Califano* v. *Yamasaki*, 442 U.S. 682 (1979), to redress the Secretary's violation of disability claimants' statutory rights under section 204(a) of the SSA, 42 U.S.C. §404(a). 442 U.S. at 698-703.

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* "Since Congress amended the Social Security Act in 1954 to provide for disability benefits . . ., it repeatedly has suggested that the Secertary promulgate regulations defining the criteria for evaluating disability. . . While these sources do not establish the original congressional intent, they indicate that later Congresses perceived that regulations such as the guidelines would be consistent with the statute."

** Indeed, such regulations were issued in proposed form in response to a court order in *Blankenship, supra*, but then withdrawn. The withdrawal was not based on any claimed statutory prohibition. The Secretary's persistent refusal to issue uniform processing deadlines, even under court order, is the short answer to her complaint in this case that myriad court orders "balkanize" the administrative process. It is the Secretary's failure to adopt uniform deadlines in the face of myriad court orders that has "balkanized" the process. Furthermore, the Secretary raises this issue for the first time in this court. There are no facts in the record to support the assertion.

Yamasaki answers, favorably to the plaintiff class here, all the arguments as to relief raised by the Secretary. In *Yamasaki*, this Court found a statutory right to a face-to-face hearing on a request for waiver of recoupment, and approved a stay of recoupment decisions until such hearings took place, even though the statute did not expressly provide for either a hearing or a stay. In affirming class-wide prospective injunctive relief, the Court elaborated on the broad equitable powers of the federal courts, in particular under the SSA, and the need to impose equitable relief on a class-wide basis:

> The Secretary's reading of the statute is too grudging. Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction [cites omitted]. Nothing in either the language or the legislative history of §205(g) indicates that Congress intended to preclude injunctive relief in §205(g) suits.
>
> Injunctions can play an essential role in §205(g) litigation. Without the power to order a stay of recoupment pending decision, a court for all practical purposes would be unable to "reverse" a decision concerning prerecoupment rights. In class actions, injunctions may be necessary to protect the interests of absent class members and to prevent repetitive litigation. While the grant of injunctive relief makes the Secretary's duty to comply enforceable by contempt order, "[s]urely Congress did not intend §205(g) to provide reluctant federal officials with a means of delay in the remote eventuality that they might not feel bound by the judgment of a federal court." *Norton* v. *Mathews*,

> 427 U.S., at 535 (dissenting opinion).* The conclusion that injunctive relief is available under §205(g) is supported both by our implicit holding that a three-judge court was properly convened in *Jimenez* v. *Weinberger*, 417 U.S. 628 (1974), and by the opinions of four Courts of Appeals.**

Yamasaki, 492 U.S. at 705-06. The injunctive relief awarded herein is similarly authorized by section 205(g) of the SSA, 42 U.S.C. §405(g). Just as the claimants in *Yamasaki* were properly entitled to a stay of recoupment pending a hearing on their waiver request in order to give meaningful effect to the court's order that a hearing must be provided, claimants here are entitled to interim monetary relief for violation of the injunction as to processing deadlines in order to give meaningful effect to the court order.

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* Given that the district court would presume that the Secretary would "feel bound" by its judgment, and therefore not incur the award of monetary relief, her arguments as to the intrusiveness of the court in awarding such relief are overwrought in the extreme.

** One of the Courts of Appeals' decisions cited with approval by this Court is that of the First Circuit in *Caswell* v. *Califano*, *supra*. *Yamasaki*, 442 U.S. at 706 n.18. *Caswell*, like the instant case, imposed a classwide deadline of 90 days for scheduling ALJ hearings to review denials of benefits to disability claimants. 583 F.2d at 17-18. This Court's citation to *Caswell* was addressed to the principle that the traditional scope of the courts' equitable powers and their powers under Fed. R. Civ. P. 23 are not limited by 42 U.S.C. §405(g).

CONCLUSION

For all the foregoing reasons, the decision of the Court of Appeals should be affirmed.

September 26, 1983

Respectfully submitted,

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